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IN THE

Supreme Court of the United States

OCTOBER TERM, 1934.

No. 441.

UNITED STATES MORTGAGE COMPANY AND MORTGAGE GUARANTEE COMPANY

vs.

MARY E. MATTHEWS AND JOHN MATTHEWS.

BRIEF ON BEHALF OF RESPONDENTS.

FREDERICK H. HENNIGHAUSEN,
J. CALVIN CARNEY,
CHARLES F. STEIN, JR.,
Counsel for Respondents.

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STATEMENT OF FACTS.

On July 30th, 1925, Walter H. Worner executed a first mortgage to the Mortgage Guarantee Company for Three Thousand Dollars ($3,000) on the two-story brick row dwelling No. 1339 Patapsco Avenue, Baltimore, Maryland. The mortgage provided for the payment of interest at six per cent. per annum, payable quarterly, and for the maturity of the principal three years from date, and contained the usual covenants to pay all taxes, assessments, public dues and charges levied or assessed against the mortgaged property, as well as the provision:

"And the said Mortgagor doth hereby declare his assent to the passing of a decree by the Circuit Court

of Baltimore City or the Circuit Court No. 2 of Baltimore City, for a sale of the property hereby mortgaged, in accordance with Chapter 123, Sections 720 to 732, inclusive, of the Laws of Maryland passed at the January Session in the year 1898, or any amendments or additions thereto" (Record, p. 3).

On July 30, 1932, the Mortgage Guarantee Company sold and assigned to Mary E. Matthews and John Matthews, an undivided 500/2950 share (equivalent to $500) in said mortgage—$50.00 having been paid on account of the principal thereof. The assignment recites the maturity of said mortgage had been extended as follows:

$100.00 due July 30, 1933

$100.00 due July 30, 1934

$2,750.00 due July 30, 1935.

This assignment of mortgage was duly recorded (Record, p. 8).

On December 15, 1933, the General Assembly of Maryland passed Chapter 56, Acts of 1933 (Special Session), which attempted to withdraw from holders of less than 25% of the unpaid mortgage debt the right to avail themselves of Sections 720-732 of the Acts of 1898 while preserving all rights thereunder to holders of 25% or more of the entire unpaid mortgage debt. At the same Session of said General Assembly there was submitted thereto an Act designated to afford moratorium relief to mortgagors, which Act was not passed (Record, p. 90).

Sections 720-732, Acts of 1898, and Chapter 56, Acts of 1933 (Special Session), above referred to, will be found in an appendix to this brief.

As of December 22, 1933, Mary E. Matthews and John Matthews, record holders by assignment of said undivided 500/2950 share in said mortgage, filed a petition for a Decree for the sale of said property because of default in payment of the 1932 and 1933 taxes and installment on the principal of the mortgage debt, and asserted said Chapter 56 was unconstitutional for the reasons therein set forth. The applicants, as assignees, were entitled to such a Decree under authority of:

Richardson vs. Owings, 86 Md. 663,
Doeller vs. Mortgage Guarantee Co., No. 39 of January Term, 1934, Court of Appeals of Maryland,

in the absence of Chapter 56, Acts of 1933 (Special Session).

The United States Mortgage Company, owner of the equity of redemption in said property, and Mortgage Guarantee Company, holder of record or duly authorized representative of approximately 83% of the unpaid mortgage debt, filed a Demurrer to said Amended Petition which was overruled, and thereupon filed an Answer. The case was heard by Eugene O'Dunne, J., upon Amended Petition and Answer; he held Chapter 56, Acts of 1933 (Special Session) unconstitutional and signed a Decree appointing Clarence A. Tucker, Solicitor for United States Mortgage Company and Mortgage Guarantee Company, Trustee to make sale. The United States Mortgage Company and Mortgage Guarantee Company took an appeal from this decision to the Court of Appeals of Maryland, which upheld the decision of the lower Court.

ARGUMENT.

I.

CHAPTER 56, ACTS OF 1933 (SPECIAL SESSION) IS UNCONSTITUTIONAL BECAUSE SAID ACT IMPAIRS THE OBLIGATION OF A CONTRACT, I. E., THE MORTGAGE MADE BY WALTER H. WORNER TO MORTGAGE GUARANTEE COMPANY, AND IN TURN ASSIGNED BY IT TO RESPONDENTS, MARY E. MATTHEWS AND JOHN MATTHEWS, WITHOUT AFFORDING AN ALTERNATIVE REMEDY SUBSTANTIALLY EQUIVALENT TO THAT IN FORCE WHEN THE CONTRACT WAS MADE; SAID ACT ALSO DEPRIVES RESPONDENTS OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW.

Section 10, Article 1 of the Constitution of the United States was meant to prohibit State action impairing the obligation of contracts primarily and especially in respect to such legislation passed for the purpose of giving relief to debtors in time of emergency. The Supreme Court of the United States by its decisions has so construed said clause of the Constitution. In the case of Bronson vs. Kinzie, 1 How. 311, this Court held unconstitutional (1) an Illinois Statute granting a moratorium for the period of redemption after sale, and (2) a similar statute preventing a sale unless a bid for two-thirds of the appraised value of the property be received. Howard vs. Bugbee, 24 How. 461, held unconstitutional a similar statute of the State of Alabama.

In Barnitz vs. Beverly, 163 U. S. 118, the Supreme Court held unconstitutional a law of the State of Kansas extending the period of redemption after sale for a period of eighteen months. Among other cases on said clause of the Constitution are:

McCracken vs. Hayward, 2 How. 608;
Walker vs. Whitehead, 16 Wall. 314;
Bradley vs. Lightcap, 195 U. S. 1.

The mortgage contract in this case, when executed, was consummated with reference to the rights and privileges of mortgagor and mortgagee as they then existed. Under the terms and conditions of said mortgage any holder of an interest in said mortgage had the right to secure a decree for the sale of the property mortgaged in accordance with Sections 720 to 732 of Chapter 123 of Laws of Maryland, January Session, 1898 (Richardson vs. Owings, 86 Md. 663; Doeller vs. Mortgage Guarantee Co., No. 39, January Term, 1934, Court of Appeals); there was no condition limiting the right to a decree to the holder of a 25% or more interest in said mortgage. Now by the Act in question it is attempted to so deprive a holder of less than the minimum interest from exercising the right given him by the mortgage. The mortgage intended to give, and contains a covenant which gives this right to any or all the holders of an interest in the mortgage, it is a right given by contract, while the Act of the Legislature gives to the holders of only more than 25% of the interest in the mortgage the right to which all holders of interest in the mortgage were entitled by virtue of the terms thereof.

The Petitioners urge that the legislation in question does not impair the obligation of the contract made by the mortgagor and mortgagee, but that the said Act affects the remedy only, and that the holder of less than a 25% interest in a mortgage still has the remedy afforded him by (a) strict foreclosure, and (b) foreclosure by formal proceedings.

Strict foreclosure in Maryland is an involved and cumbersome method, requiring personal service on the mortgagor, his assigns, and other lien creditors; (Venable, Syllabus on Real Estate, Section 177; Miller Equity Pro-

cedure, Section 445, etc.) there also seems to be some doubt as to the present validity of this proceeding in Maryland. (Charles vs. Claggett, 3 Md. 82, page 96 (Record, p. 104.)) Foreclosure by formal proceedings necessitates the filing of a bill in equity to foreclose the mortgage, said bill to be in conformity with the regular pleadings and practice in equity, requiring service of summons upon parties, answers, testimony, etc. There is doubt whether the holder of an *interest* in a mortgage can file a bill by formal proceedings to foreclose (Record, p. 122). So by relegating the holder of less than a 25% interest in a mortgage to the two remedies above set forth for the enforcement of his rights, Chapter 56 of the Acts of 1933 (Special Session) in effect practically deprives him of any means of enforcing the same.

In the case of Seibert vs. Lewis, 122 U. S. 294, the Supreme Court said:

> "It is well settled by the decisions of this Court that the remedy subsisting in a State when and where the contract is made, and is to be performed, is part of its obligation, and any subsequent law of the State which so effects that remedy as substantially to impair and lessen the value of the contract is forbidden by the Constitution, and is therefore void."

> "The doctrine is most strongly stated in Bryan vs. Virginia, 135 U. S. 693, as follows: 'It is well settled by the adjudications of this Court that the obligation of a contract is impaired in the sense of the Constitution by an Act which prevents its enforcement or which materially abridges the remedy for enforcing it which existed at the time it was contracted, and does not supply an alternative remedy equally adequate and efficacious'."

Miners Bank vs. Snyder, 100 Md. 57;
Baugher vs. Nelson, 9 Gill 299.

In the case of Barnitz vs. Beverly (supra), it was held that a state statute seeking to substitute, on the foreclosure of pre-existing mortgages, a right to sell the premises subject to an estate or right of possession in the debtor or his alienees for eighteen months, in place of the right to sell them free from redemption, is an impairment of the obligation of a contract.

Chapter 56 of the Acts of 1933 (Special Session) is an attempt to deprive respondents of their legal rights; the remedies remaining come in the classification made by the Court in Oatman vs. Bond, 15 Wisconsin 29, where it said "equally objectionable is a law which burdens the remedy with such restrictions as to make it useless or not worth pursuing."

In Bronson vs. Kinzie, 1 How. 311, it was said:

> "Whatever belongs merely to the remedy may be altered according to the will of the state, provided the alteration does not impair the obligation of the contract. But if that effect is produced, it is immaterial whether it is done by acting on the remedy or directly on the contract itself. In either case it is prohibited by the Constitution."

Chapters 56 and 57, Acts of 1933 (Special Session), are not merely a modification of the remedy; they affect a material and injurious change in the obligation. The legal right to a decree appointing a trustee and to have the trustee offer said property for sale upon default belonged to the mortgagee when the mortgage was made, as did the right in a power of sale contained in a mortgage.

A statute which materially delays enforcement of the mortgagee's contractual right of ownership and posses-

sion does not modify the remedy merely, it destroys for the period of delay all remedy as far as the enforcement of that right is concerned.

The remedies denied to the respondents are so interwoven with and part of the rights given to the mortgagee by the terms of the mortgage that the denial of the remedy is a denial of the right; and so has the same effect as if the Acts directly impaired the obligation of the contract itself.

Bryan vs. Virginia, supra;
New Orleans vs. Louisiana, 102 U. S. 203, 207.

The right of the mortgagee to realize on the security, in event of default, is suspended for one and one-half years by said Chapters 56 and 57, Acts of 1933 (Special Session). This period is fixed and absolute, without relation to the continuance of or change in existing conditions, and without judicial determination of adequate cause, or power of change to adjust to altered conditions.

It is obvious that the changes are material and prejudicial to the mortgagee, and not only his remedies but also his substantial rights are materially impaired; in the language of the Court of Appeals of Maryland (Record, p. 124):

> "If then all of such remedies are taken away, and there remains a totally inadequate remedy, as compared to those taken away, it seems clear that an attempt to make such legislation applicable to pre-existing mortgages is unconstitutional and void."

It is argued that support for the statute now under consideration may be found in the well-known "Rent Cases" in the Supreme Court: Block vs. Hirsch, 256 U. S. 135;

Marcus Brown Holding Co. vs. Feldman, 256 U. S. 170; Levy Leasing Co., Inc., vs. Siegel, 258 U. S. 242; and in the more recent Minnesota Mortgage Moratorium case (Home B. & L. Assn. vs. Blaisdell, 290 U. S. 398). These cases do decide that in a legislatively declared emergency directly affecting the public interest (not a private interest), laws of temporary duration, proportioned to the emergency, and terminating with said emergency, may validly create a reasonable moratorium against the enforcement of their legally valid claims by landlords and mortgagees, on condition of payment to them of the reasonable rental value of the property during the period of the moratorium.

The Rent Cases, said Mr. Justice Holmes (who wrote the opinion in the first two) in the later case of Pennsylvania vs. Mahon, 260 U. S. 393, 416, "went to the verge of the law".

The Acts here in question are not consistent with the principles laid down in the Blaisdell case. In the Minnesota mortgage law the time for which such moratorium was to take effect was not arbitrarily fixed but was to be determined by the Court, and could be terminated sooner than the time fixed in the law if the Court should find that conditions warranted it.

In the later case of Worthen vs. Thomas, 292 U. S. 426, holding unconstitutional the Arkansas exemption statute, the Supreme Court pointed out that the decision in the Blasidell case was not to be construed to "permit the State to adopt as its policy the repudiation of debts or the destruction of contracts or the denial of means to enforce them".

In the Acts of the Legislature here in question there is no provision for a payment to the mortgagees of a reasonable rental value of the property during the period of the moratorium, neither is any Court authorized to terminate the effect of such Acts if the Court should find that conditions warrant a termination in a particular case.

II.

SAID ACT IS UNCONSTITUTIONAL BECAUSE IT DENIES THE EQUAL PROTECTION OF THE LAW TO HOLDERS OF LESS THAN 25% INTERESTS IN A MORTGAGE.

The Act of the Legislature makes a classification between the holders of less than 25% of the entire interests in a mortgage and the holders of more than 25% of the interests in the same mortgage, and is repugnant to the 14th Amendment of the Constitution of the United States.

The rule governing classification is briefly as follows: (a) It must be based on substantial distinctions which make real differences. (b) It must be germane to the purposes of the law. (c) It must not be limited to existing conditions only and must apply equally to each member of the class.

Borgnis vs. Falk, 147 Wis. 327.

It is submitted that the Act of the Legislature does not meet any of the requirements laid down. Is there any substantial distinction between a person owning a 24% interest and one owning a 25% interest in a mortgage, and is there any real difference caused by the possession of the 1%?

In the case of Cotting vs. Kansas City, 183 U. S. 79, the Supreme Court said:

> "It appears that a classification is attempted between stock-yards doing a large and those doing a small business. The express and only classification is in the amount of business done by the two classes. * * * it has been more than once said judicially that one of the principles upon which this government was founded is that of equality of right. It is emphasized in that clause of the Fourteenth Amendment, which prohibits any state to deny to any individual the equal protection of the laws. * * * We must always remember that the equal protection of the laws is guaranteed, and that such equal protection is denied when upon one of two parties engaged in the same kind of business and under the same conditions burdens are cast which are not cast upon the other. * * * This statute is not simply legislation which in its indirect results affects different individuals differently, * * * but is a positive and direct discrimination between persons engaged in the same class of business, and based simply upon the quantity of business which each may do. If such legislation does not deny the equal protection of the laws, we are unable to perceive what legislation would."

And in University of Maryland vs. Williams, 9 Gill and Johnson 365, Buchanan, C. J., in discussing the corresponding section of the Maryland Bill of Rights (Article 23), said:

> "An act which only affects and exhausts itself upon a particular person, or his rights and privileges, and has no relation to the community in general, is rather a sentence than a law."

The mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and in all cases it must appear not only that a classification has been made, but also that it is based upon some reasonable ground,—something which bears a just and proper relation to the at-

tempted classification, and is not a mere arbitrary selection.

Gulf, Colorado & Santa Fe R. R. Co. vs. Ellis, 165 U. S. 150;
Liggett Co. vs. Lee, 288 U. S. 517;
Spann vs. Gaither, 152 Md. 1.

In the case of Conway vs. Union Sewer Pipe Company, 184 U. S., p. 540, the Court said, in speaking of unequal protection of the law and classification:

> "But upon this general question we have said that the guarantee of the equal protection of the law means that no person or class of persons shall be denied the same protection of the law, which is enjoyed by every person, or every person in the same class and like circumstances."

III.

CHAPTER 56, ACTS OF 1933, SPECIAL SESSION, IS UNCONSTITUTIONAL BECAUSE SAID ACT IS IN THE CLASSIFICATION OF ONE PASSED FOR A PRIVATE USE AND NOT FOR A PUBLIC USE.

The testimony of the witnesses, both for petitioners and respondents, shows that the Mortgage Guarantee Company is the only person or corporation in the State of Maryland that sells fractional interests in mortgages and assigns an undivided share in said mortgage to the purchaser. This testimony is uncontradicted (Record, pp. 37, 38, Fairbank; pp. 43, 44, 45, 46, 47, Buck; p. 56, Tucker). The Record further discloses that Chapter 56, Acts of 1933, Special Session, was prepared and introduced at the instigation of the Mortgage Guarantee Company (Record, pp. 48, 49, 52, 53), and was designed for the specific relief of said Mortgage Guarantee Company (Opinion of Court, Record, pp. 108-109). Said statute is an attempted moratorium, not for debtors, but for a creditor, and for a 75% creditor against a 25% creditor.

The Act is not of importance to the public, but only of importance to the Mortgage Guarantee Company, a mortgagee, not a mortgagor.

The testimony shows that the Mortgage Guarantee Company, its subsidiaries and affiliated companies, owns or has control of the equity of redemption in *over sixty per cent.* of the properties conveyed as security for mortgages made to said Mortgage Guarantee Company, and in which mortgages on property in the State of Maryland fractional interests were assigned by said Mortgage Guarantee Company (Record, pp. 82-85, Exhibit No. 3, Record, p. 94). By the passage of Chapters 56 and 57, Acts of 1933, Special Session, the said Mortgage Guarantee Company, by virtue of its control of over seventy-five per cent. of the outstanding assignments of mortgages, could effectively block any foreclosure of mortgages of which it had assigned undivided shares or interests, and so could protect itself from any liability as guarantors of said mortgages. The substantial effect is to transfer the property of the respondents (the right to foreclose the mortgage by summary proceedings) to the Mortgage Guarantee Company, by requiring the said respondents to secure the consent of said company in order to foreclose said mortgage. It is quite like taking private property for private use. Such legislation is not consistent with due process of law. "The taking by a state of the private property of one person or corporation, without the owner's consent, for the private use of another, is not due process of law, and is a violation of the Fourteenth Article of Amendments of the Constitution of the United States."

Missouri Pacific Ry. vs. Nebraska, 164 U. S. 403, 417;

Gunn vs. Barry, 82 U. S. 619;

Loan Association vs. Topeka, 87 U. S. 655-664.

Contracts, like other property, must yield somewhat to paramount public interest, but the extent of the permissible interference must be judicially determined by public, not private, or even class interests, and must be only such as is reasonable and appropriate thereto.

* * * * *

The Petitioners contend that Chapter 56 of the Acts of 1933 (Special Session), does not impair the obligation of contract, because the assent contained in a mortgage expressly or by necessary implication contemplates amendments or additions to the original act.

In discussing the assent to a decree contained in the Worner mortgage, the Court of Appeals said (Record, p. 120):

> "The appellants * * * contend that by the language of the mortgage, the mortgagor assented to the sale of the property under and in accordance with the provisions of Sections 720 to 732 inclusive, of Chapter 123 of the Acts of 1898, * * * or any amendments or additions thereto; which meant that the mortgagor consented to having the proceedings for a consent decree governed by any future amendments or additions to those sections which should become effective before the application for the consent decree."
>
> "While it is true that at the time this language was incorporated in the mortgage, there had been no explicit amendment or addition to these sections of the law providing for consent decrees, the argument is made that the language was intended to apply to any future amendments or additions. We are unwilling to give sanction to such a construction; and we hold that the intention of the parties in employing that language embraced only such amendments or additions as had been made prior to the execution of the mortgage. A contrary holding would mean that a

complete destruction of that remedy was contemplated."

Continuing, the Court says (Record, p. 127):

"For the reasons above set forth, we hold that Chapters 56 and 57 of the Acts of the Special Session of the General Assembly of 1933 have no effect upon the mortgage here in controversy."

The meaning attributed by the highest Court of a state to a statute of the State must be accepted by the United States Supreme Court on review as though it had been specifically expressed in the statute.

Watson vs. State of Maryland, 218 U. S. 173;
Knights of Pythias vs. Meyer, 265 U. S. 30.

And the Supreme Court will follow the state construction even though it may not agree with said construction.

Supervisors vs. U. S., 18 Wall. 71;
Tioga R. R. vs. Blossburg, 20 Wall. 137.

The Court of Appeals of Maryland has decided that the meaning of Chapters 56 and 57, Acts of 1933, Special Session, is that mortgages made after December 15, 1933 could not be foreclosed under an assent to a decree or a power of sale contained in the mortgage except in the manner prescribed by the Act; that said Acts did not apply to a mortgage made before December 15, 1933, as was the mortgage in question. Accordingly it is submitted that the meaning attributed to said statutes by the Court of Appeals should be accepted by the United States Supreme Court.

The next point in the Specification of Errors is that said Chapter 56 operates only upon the remedy and does

not impair the substantive rights under the mortgage contract.

The Court of Appeals in its opinion in discussing this question (Record, p. 122) says:

> "The form of the remedy does not enter into his right, which inheres merely in the effectiveness of his remedy, but he is entitled to some remedy, and that remedy must be substantially equivalent in coercive force to that provided by law when the obligation was contracted. * * *
>
> Applying this settled law to the facts of the case now before us, let us ascertain if those facts show a change, modification or abolition of the remedies available to the mortgagees at the time the mortgage was executed, such as would leave them with no remedy at all, or with a remedy which is not substantially equivalent in coercive force to that provided by the law when the obligation was contracted."

The Court then discusses the five distinct methods of procedure, to enable a mortgagee to enforce the right of payment against the property mortgaged, and the effect of Chapter 56 on the mortgage of the respondents in these words:

> "In other words, before the enactment of said Chapter 56, under the express terms of the contract contained in the mortgage, the appellees (respondents) could resort to either one of two summary proceedings for the sale of the mortgaged property, * * * and had the absolute rights to such remedies without the co-operation or consent of any of the other fractional holders of the mortgage; whereas after the passage of said Chapter 56 all summary remedies by sale of the property were denied, unless and until at least 25% in interest of the unpaid mortgage debt should join in the foreclosure proceeding.

> * * * The two remedies denied to the appellees (respondents) are so interwoven with the right contracted for that the abolition of the remedy impairs the right, and is repugnant to the constitutional provisions prohibiting the states from passing legislation impairing the obligation of a contract. * * * It requires no argument to convince us that the right to proceed to the collection of the money due * * * without the consent or co-operation of any other person interested in the mortgage, was an extremely valuable portion of the contract. * * * If, then, all of such remedies should be taken away, and there remains a totally inadequate remedy, as compared to those taken away, it seems clear that an attempt to make such legislation applicable to pre-existing mortgages is unconstitutional and void."

The Court of Appeals of Maryland found that the remedies remaining to respondents are "totally inadequate". The rule is settled that the decision of a State Court upon a question of fact is ordinarily accepted by the Supreme Court. Christman vs. Miller, 107 U. S. 313. And in the present case, it is submitted that the findings of the Circuit Court No. 2 (Record, p. 108) and the Court of Appeals of Maryland, as to the relative value of the different methods of foreclosure, should be accepted by this Court as decisive because of the more intimate knowledge obtained by the lower Courts as to the practical effects of the different remedies, acquired by their constant association with such procedure.

The Petitioners next make the point that even if the contractual rights of the respondents are impaired by the Act, that an economic condition, constituting an emergency, exists and continues, and said legislation is a legitimate exercise of the police power of the state. In the case of Hendrickson vs. Apperson, 245 U. S. 105, it was

held that in order to justify the interposition of the police power of the state, it must appear that the interest of the public, as distinguished from a particular class, requires such intervention, for it is a rule that police power cannot be invoked to protect one class of citizens against another class unless such intervention is for the real protection of society in general. And in the case of Home Building and Loan Association vs. Blaisdell, supra, the Supreme Court held that in times of emergency, affecting the general public, the obligation of the contract might be postponed by the legitimate exercise of the police power of the state. The present case, however, cannot be adapted to the law laid down in the aforesaid cases, for the reason that the economic emergency alleged to exist, is determined by legislative fiat to exist only as to mortgages in Baltimore City which are held by more than one person, and for an arbitrary duration of time running from December 15th, 1933, to June 1st, 1935; the Legislature of the State of Maryland at the same extra session at which Chapter 56 was passed refused to pass a bill for the general suspension of foreclosure of mortgages for the same period (Record, p. 90). The mere fiat of the Legislature, as set out in Chapter 56, is not conclusive on the Court when the facts show contrary conditions to exist.

Shoemaker vs. U. S., 147 U. S. 282.

The case of Chastleton Corporation vs. Sinclair, 264 U. S. 543, involves the Act known as the District of Columbia Rent Act, regulating the rents in the District of Columbia, and which was upheld as an emergency measure in Block vs. Hirsch, 256 U. S. 135. In the Chastleton Case, the Court said:

> "To repeat what was said in Block vs. Hirsch as to the respect due to a declaration of this kind by the

> Legislature, so far as it relates to present facts. But even as to them a Court is not at liberty to shut its eyes to an obvious mistake, when the validity of the law depends upon the truth of what is declared. Charles Wolff Packing Co. vs. Court, 262 U. S. 522. And still more obviously so far as this declaration looks to the future it can be no more than prophecy, and is liable to be controlled by events. A law depending upon the existence of an emergency, or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change * * *."

The respondents submit that this Court is not at liberty to shut its eyes to an obvious mistake, the mistake being that if there is an economic emergency affecting public interest, that said emergency would effect real estate of all kinds and would not be restricted to real estate conveyed as security for a mortgage held by more than one person; and that as the Legislature of the State of Maryland, by its action in refusing to pass the General Moratorium Act, had decided in effect that there is no economic emergency affecting the public in the City of Baltimore, there can be no public emergency justifying the passage of Chapter 56 under the guise of the exercise of police power of the State, particularly as said Act is designed only for the particular use and benefit of the Mortgage Guarantee Company and not for the benefit of the public as a whole. In an act designed to alleviate conditions of public emergency, the means established by the Act must bear a definite relationship to the end sought to be obtained, and certainly the restraint of foreclosure of mortgages by holders of less than 25% interest therein cannot be held to alleviate "abnormal deflation of real and leasehold property values in Baltimore City."

Under the doctrines expressed in the case of Home Building & Loan Association vs. Blaisdell, supra, and other cases heretofore cited, it has been decided that the constitutional prohibitions imposed upon the States by the contract clause of the Federal Constitution are not to be applied with literal exactness, but must be construed in relation and subject to the reserved powers of the several States to safeguard the interests of the people. But by Article 44 of the Maryland Declaration of Rights, the people of the State of Maryland imposed a restriction on the reserved power of the State, by declaring therein that the provisions of the Federal Constitution should strictly apply at all times. In the words of said Article:

> "That the provisions of the Constitution of the United States and of this State, apply as well in time of war as in time of peace; and any departure therefrom, or violation thereof, under a plea of necessity, or any other plea, is subversive of good government and tends to anarchism and despotism."

This Article of the Maryland Declaration of Rights was enacted in the year 1867, and its purpose was undoubtedly to prohibit any modification of constitutional rights and guaranties given to the citizens of the State, under the plea of necessity and distress, the Constitutional Convention having in mind the experiences of its citizens during the period of the Civil War.

Accordingly it is urged that the provisions of the Federal Constitution must be more literally construed in case involving a Maryland Statute, than in cases from other jurisdictions, since the people of Maryland have so expressed themselves in said Article of their Declaration of Rights.

For all of which reasons it is respectfully submitted that the decision of the Court of Appeals of Maryland should be affirmed.

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CHARLES F. STEIN, JR.,

Counsel for Respondents.

APPENDIX.

Acts of the General Assembly of Maryland of 1898, Chapter 123, Section 720.

Article 4 of the Code of Public Local Laws of Maryland (1930 edition), entitled "Baltimore City", subtitle "Mortgages", Section 720.

720. In all cases of conveyances of lands or hereditaments or of chattels real, or goods and chattels personal, situate in the said city, wherein the mortgagor shall declare his assent to the passing of a decree for the sale of the same, it shall be lawful for the mortgagee or his assigns at any time after filing the same to be recorded, to submit to either of the Circuit Courts of Baltimore City the said conveyances or copies thereof, under seal of the Superior Court; and the Circuit Court to which the same is so submitted, may thereupon forthwith decree that the mortgaged premises shall be sold at any one of the periods limited in said conveyances for the forfeiture of said mortgages or limited for a default of the mortgagors, and on such terms of sale as to the said court may seem proper, and shall appoint by said decree a trustee or trustees for making such sale, and shall require bond and security for the performance of the trust as is usual in cases of sales of mortgaged premises.

Acts of the General Assembly of Maryland, Special Session, 1933, Chapter 56.

AN ACT to add a new section to Article 4 of the Code of Public Local Laws of Maryland (1930 Edition), en-

titled "Baltimore City", sub-title "Mortgages", said new section to be known as Section 720A and to follow immediately after Section 720 of said Article, relating to securing decrees under mortgages containing an assent to such decrees for a foreclosure sale.

WHEREAS, Under the aforesaid Section 720, as the same has been construed by the Court of Appeals of Maryland, a holder of a fractional interest, no matter how small, in a debt secured by a mortgage, may now secure a decree under the assent to such decree contained in said mortgage, and upon any default in such mortgage, the trustee named in said decree may foreclose the same, even though such foreclosure be against the wishes of the holders of the remainder of said debt secured by said mortgage; and

WHEREAS, By reason of the prolonged business depression, there has been an abnormal deflation of real and leasehold property values in Baltimore City, and any precipitate foreclosure would affect seriously the investment in such mortgage, perhaps injuring irrevocably the safety of the investment; and

WHEREAS, By reason of the aforegoing and other adverse conditions, an emergency is hereby declared to exist as a matter of Legislative determination, necessitating Legislative intervention by the enactment of the provisions hereinafter prescribed, and their application during such emergency; now therefore,

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That a new section be and the same is hereby added to Article 4 of the Code of Public Local Laws of Maryland (1930 Edition), title "Baltimore City," subtitle "Mortgages," said new section to be known as 720A and to follow immediately after Section 720, and to read as follows:

720A. In all cases submitted to either of the Circuit Courts of Baltimore City for the passage of a decree as provided for in Section 720 aforesaid, no such decree shall hereafter be passed during the period of emergency hereinafter declared, unless such application is made or concurred in by the record holders of not less than 25% of the entire unpaid mortgage debt, it being hereby declared to be the intent of this Section during the period this Section is effective, that the holder or holders of a fractional interest in an entire mortgage debt of less than 25% of the entire interest, shall not have recourse to the summary and exparte remedies given under Section 720. Where any holder of a fractional interest in an entire mortgage debt is an infant or otherwise incompetent, such consent may be given by his guardian or committee as the case may be, or if there is no such guardian or committee, then such consent may be given by his next friend, and any consent so given shall be as valid and effective for the purposes of this Act as if such holder were not under any disability.

SEC. 2. *And be it further enacted,* That the period of the emergency hereinbefore declared as a matter of Legislative determination, shall be the period of time from the date this Act takes effect to the first day of June, 1935.

SEC. 3. *And be it further enacted,* That this Act is hereby declared to be an emergency law and necessary for the immediate preservation of the public health and safety, and having been passed upon by a yea and nay vote, supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, the same shall take effect from the date of its passage.

Approved December 15, 1933.